

Served: December 24, 1997



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 18th day of December, 1997

Applications of

VARIOUS FOREIGN AIR CARRIERS

for exemptions or authorities under 49 U.S.C.
section 40109 and the orders and regulations
of the Department of Transportation

Dockets OST-97-3159
 OST-97-3085
 OST-97-3066
 OST-97-2828
 OST-96-1667
 OST-96-1566
 Undocketed
 Undocketed

ORDER

The foreign air carriers referenced in the attached Notices of Action Taken have applied for various forms of authority or relief from Title 49 of the U.S. Code or regulations or orders of the Department in order to perform the air transportation activities shown in the attached Notices of Action Taken. Except as noted, no answers were filed to these requests. Because of the imminence of these operations, we approved them by telephone, subject to adherence, by each applicant, to the conditions set forth in its foreign air carrier permit, and/or conditions attached.

We carefully considered the information set forth in each application described in the attached Notices of Action Taken, and we found that each of the proposed operations was consistent with the public interest and was consistent with an applicable bilateral aviation agreement and/or our aviation relationship with the applicant's homeland, that each applicant was qualified to perform its proposed operations, and that each application should be approved.

For applicant carriers seeking initial operating authority, we determined, based on the record in those proceedings, that those carriers were financially and operationally qualified to conduct the services they proposed, and, unless otherwise noted, that they were substantially owned and effectively controlled by citizens of their respective homelands.

Under authority assigned by the Department in its Regulations, 14 CFR Part 385, we found that for each operation (1) immediate action was required and was consistent with Department policy; (2) grant of the exemption or authority was consistent with the public interest; and (3) grant of this authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. We confirm the actions described in the attached Notices of Action Taken, which granted the referenced foreign air carriers (1) exemptions from the provisions of sections 41301, and where necessary 41504, and/or other sections of Title 49 of the U.S. Code; and/or (2) relief or authorizations provided for under regulations or orders of the Department, to the applicants to perform the operations described in the attached Notices of Action Taken;
2. In the conduct of the service, each applicant was to adhere to the conditions set forth in Appendix A, and to any other conditions as noted in the attached Notices of Action Taken;
3. To the extent not granted, or explicitly deferred as noted in the attached Notices of Action Taken, these applications are denied; and
4. We may amend, modify, or revoke this order at any time without hearing.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.50, may file their petitions within ten (10) days after the date of service of this order. The filing of a petition for review of a particular action shall affect this order only as it concerns that action.

These actions were effective when taken, and the filing of a petition for review will not alter their effectiveness.

By:

PAUL L. GRETCH
Director
Office of International Aviation

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
<http://www.dot.gov/general/orders/aviation.html>*

CONDITIONS OF AUTHORITY

APPENDIX A

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
 - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-97-3159

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decisional document will be issued as soon as possible.

Applicant: CENTRAL MOUNTAIN AIR LTD.

Date filed: November 25, 1997

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to conduct scheduled, combination service between Calgary, Canada, and Spokane, Washington, using small equipment, for a period of one year; and an exemption from 49 USC section 41301 and Statement of Authorization under 14 CFR Part 212 to the extent necessary to wet lease small equipment to Air Canada, for the operation of Air Canada's scheduled service in that market, for a period of one year.

If renewal, date of last action(s): New authority.

Applicant representative: Neil Blackwell, 250-847-4780

Responsive pleadings: None.

DISPOSITION

Action: Approved

Action date: November 26, 1997

Effective date of authority granted: November 26, 1997, through November 26, 1998.

Basis for approval: 1995 United States-Canada Air Transport Agreement (Agreement).

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations of Appendix A.

Special conditions/Partial grant/Denial basis/Remarks: We find that the carrier is operationally and financially qualified to conduct the operations it proposes and that it is substantially owned and effectively controlled by citizens of Canada. In the conduct of these operations, the carrier must adhere to all applicable provisions of the U.S.-Canada Agreement, and may only use aircraft having a maximum passenger capacity of not more than 30 seats and a maximum payload capacity of not more than 7,500 pounds.

Action taken by: Paul L. Gretch, Director, Office of International Aviation, under assigned authority (14 CFR 385). (Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-97-3085

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decisional document will be issued as soon as possible.

Applicant: PACIFIC INTERNATIONAL AIRLINES, S.A. Date filed: November 4, 1997

Relief requested: Exemption from 49 USC section 41301 and Statement of Authorization under 14 CFR Part 212 to permit Pacific International Airlines to wet lease B727-100 freighter equipment to Cayman Airways for all-cargo operations between the Cayman Islands and Miami, Florida, for a period of one year.

If renewal, date of last action(s): We most recently granted this authority on August 5, 1997, through October 11, 1997; confirmed by Order 97-9-7.

Applicant representative(s): Robert D. Papkin and Charles F. Donley, 202-626-6601

Responsive pleadings: None.

DISPOSITION

Action: Granted through January 11, 1998, and deferred action on remainder of request; that is, to continue this wet-lease operation beyond January 11, 1998, through November 12, 1998.

Action date: November 12, 1997

Basis for approval: Reciprocity with Panama.

Except to the extent exempted/waived, this authority is subject to the terms, conditions and limitations of Appendix A.

Remarks: The applicant requested an exemption (as well as authority under Part 212) to wet lease equipment to the other carrier, because it did not have underlying authority to conduct charter operations to/from the United States.

Action taken by Paul Gretch, Director, Office of International Aviation, under assigned authority (14 CFR 385). (Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-97-3066

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decisional document will be issued as soon as possible.

Applicant: **SERVICIO AEREO SALTILLO, S.A. de C.V.** Date Filed: **October 29, 1997**

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to conduct passenger charter operations between Mexico and the United States, and other passenger charters operations in accordance with 14 CFR Part 212, using small equipment.

If renewal, date of last action(s): New authority.

Applicant representative(s): Lee A. Bauer, 202-962-9440

Responsive pleadings: None.

DISPOSITION

Action: **Approved.**

Action date: **November 14, 1997**

Effective date of authority granted: **November 14, 1997, through November 14, 1998**

Basis for approval: **United States-Mexico Air Transport Services Agreement of August 15, 1960, as amended and extended (Agreement).**

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations of **Appendix A.**

Special conditions/Partial grant/Denial basis/Remarks: We find that the carrier is operationally and financially qualified to conduct the operations it proposes and that it is substantially owned and effectively controlled by citizens of Mexico. In the conduct of these operations, the carrier must adhere to all applicable provisions of the U.S.-Mexico Agreement. In the conduct of these operations, the carrier may only use aircraft capable of carrying no more than 60 passengers and having a maximum payload capacity of no more than 18,000 pounds (small equipment). The above grant includes authority to operate Third and Fourth Freedom charter operations. While we have subjected Mexican carriers conducting charters with large aircraft to prior approval of their Third and Fourth Freedom charters, consistent with the provisions of the Agreement, (see Order 92-2-7 at 5), we determined that a Third/Fourth Freedom prior approval requirement was not necessary on public interest grounds in the case of this carrier, since it will be conducting these operations solely with small aircraft. (Other charter operations to/from the United States under this authority, however, are subject to prior approval under 14 CFR Part 212.) Further, we are continuing to allow Mexican carriers conducting passenger charters using small equipment to make stopovers in the United States in the conduct of such operations.

Action taken by: **Paul L. Gretch, Director, Office of International Aviation, under assigned authority (14 CFR 385).** (Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-97-2828

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decisional document will be issued as soon as possible.

Applicant: AIR PACIFIC LIMITED

Date filed: August 20, 1997

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to conduct scheduled, combination service between Nadi, Fiji, and Toronto, Canada, via Honolulu, Hawaii, for a period of two years.

If renewal, date of last action(s): The authority to serve Toronto is new authority.

Applicant representative(s): Thomas J. Whalen and Evelyn D. Sahr, 202-289-0500

Responsive pleadings: None.

DISPOSITION

Action: Approved for a period of one year and dismissed remainder. Action date: November 19, 1997

Effective date of authority granted: November 19, 1997, through November 19, 1998.

Basis for approval: Reciprocity with Fiji.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Foreign air carrier permit conditions.

Special conditions/Partial grant/Denial basis/Remarks: In reaching our decision, we determined that the circumstances of this case warranted duration of authority for one year, which is consistent with our usual policy of granting interim exemption authority. Further, on August 20, 1997, Air Pacific also filed (jointly with Canadian Airlines International) an undocketed application for authority under 14 CFR Part 212 to conduct the above service by blocked-space/code-share arrangement with the Canadian carrier. On November 19, 1997, we concurrently addressed that request separately.

Action taken by Paul L. Gretch, Director, Office of International Aviation, under assigned authority (14 CFR 385). (Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-96-1667

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decisional document will be issued as soon as possible.

Applicant: FAST AIR CARRIER S.A.

Date filed: October 23, 1997

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to serve additional optional intermediate points on its scheduled United States-Chile, all-cargo services, for a period of one year, as follows: 1) between Chile and the U.S. coterminal points Miami, Florida, and New York, New York; via the intermediate points Lima, Peru; Guayaquil, Ecuador; Manaus, Brazil; Rio de Janeiro, Brazil; Asuncion, Paraguay; Ciudad del Este, Paraguay; La Paz, Bolivia; Santa Cruz, Bolivia; and Montevideo, Uruguay; and 2) between Chile and Los Angeles, California; via the intermediate points Lima, Peru; and Mexico City, Mexico.

If renewal, date of last action(s): New authority.

Applicant representative(s): Juan Carlos Mencia, 305-381-6252

Responsive pleadings: None.

DISPOSITION

Action: Approved.

Action date: November 12, 1997

Effective date of authority granted: November 12, 1997, through November 12, 1998.

Basis for approval: United States-Chile Air Transport Agreement.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Foreign air carrier permit conditions.

Special conditions/Partial grant/Denial basis/Remarks:

Action taken by Paul L. Gretch, Director, Office of International Aviation, under assigned authority (14 CFR 385). (Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-96-1566

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decisional document will be issued as soon as possible.

Applicant: AERO EJECUTIVA NIETO, S.A. de C.V.

Date Filed: September 25, 1997

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to continue to conduct passenger charter operations between Mexico and the United States, and other passenger charter operations in accordance with 14 CFR Part 212, using small equipment, for a period of one year.

If renewal, date of last action(s): October 2, 1996; confirmed by Order 96-10-12.

Applicant representative(s): Eugene E. Smith, 210-590-1630

Responsive pleadings: None.

DISPOSITION

Action: Approved.

Action date: November 20, 1997

Effective date of authority granted: November 20, 1997, through November 20, 1998.

Basis for approval: United States-Mexico Air Transport Services Agreement of August 15, 1960, as amended and extended (Agreement).

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations of Appendix A.

Special conditions/Partial grant/Denial basis/Remarks: In the conduct of these operations, the carrier must adhere to all applicable provisions of the U.S.-Mexico Agreement. In the conduct of these operations, the carrier may only use aircraft capable of carrying no more than 60 passengers and having a maximum payload capacity of no more than 18,000 pounds (small equipment). The above grant includes authority to operate Third and Fourth Freedom charter operations. While we have subjected Mexican carriers conducting charters with large aircraft to prior approval of their Third and Fourth Freedom charters, consistent with the provisions of the Agreement, (see Order 92-2-7 at 5), we determined that a Third/Fourth Freedom prior approval requirement was not necessary on public interest grounds in the case of this carrier, since it will be conducting these operations solely with small aircraft. (Other charter operations to/from the United States under this authority, however, are subject to prior approval under 14 CFR Part 212.) Further, we are continuing to allow Mexican carriers conducting passenger charters using small equipment to make stopovers in the United States in the conduct of such operations.

Action taken by: Paul L. Gretch, Director, Office of International Aviation, under assigned authority (14 CFR 385). (Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

UNDOCKETED

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decisional document will be issued as soon as possible.

Joint Applicants: AIR PACIFIC LIMITED and CANADIAN AIRLINES INTERNATIONAL LTD.

Date filed: August 20, 1997, as supplemented August 25, 1997

Relief requested: Statement of Authorization under 14 CFR Part 212 to permit Air Pacific and Canadian Airlines to engage in a code-share/blocked-space arrangement for scheduled service (indefinite duration) between Nadi, Fiji, and the Canadian coterminal points Vancouver and Toronto; via Honolulu, Hawaii. Under the arrangement, Air Pacific will carry Canadian Airlines' code between Nadi and Honolulu, and Canadian Airlines will carry Air Pacific's code between Honolulu and the two Canadian points.

If renewal, date of last action(s): New authority.

Applicants' representatives: Thomas J. Whalen and Evelyn D. Sahr 202-289-0500.

Responsive pleadings: On August 26 and on August 27, 1997, Northwest Airlines filed pleadings, and on August 27 and August 28, 1997, Delta Air Lines filed pleadings in this case. Both carriers urged the Department not to grant the application until Canada is prepared to act favorably on analogous code-share requests by U.S. carriers. On September 3 and September 16, 1997, the joint applicants filed additional pleadings. On September 25, 1997, Delta Air Lines filed a pleading in response to the joint applicants' September 16 pleading, restating its position concerning the state of reciprocity with Canada in this code-share area.

DISPOSITION

Action: Approved for a period of one year.

Action date: November 19, 1997

Effective date of authority granted: November 19, 1997, through November 19, 1998.

Basis for approval: During U.S.-Canada bilateral consultations held on November 18, 1997, the two delegations reached an ad referendum agreement, memorialized in an Agreed Minute, that their Governments would allow cooperative marketing arrangements between each other's airlines and third-country airlines. This understanding provides, among other things, for the third-country code-share operations at issue on the record of this proceeding.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:
Joint Applicants' foreign air carrier permit conditions.

Special conditions/Partial grant/Denial basis/Remarks: These code-share operations must comply with 14 CFR 399.88 of the Department's rules and the further conditions that this foreign air transportation be sold in the name of the carrier holding out the service in computer reservation systems and elsewhere, and that the carrier selling such transportation accept all obligations established in its contract of carriage with the passenger (that is, the ticket).

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

UNDOCKETED

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decisional document will be issued as soon as possible.

Joint Applicants: COMPANIA MEXICANA de AVIACION, S.A. de C.V. (MEXICANA) and EMPRESA de TRANSPORTE AERO del PERU (AEROPERU)

Date filed: February 27, 1997

Relief requested: Statement of Authorization under 14 CFR Part 212 to permit Mexicana to continue to engage in a code-share/blocked-space arrangement with Aeroperu for once-daily scheduled service over the routing Newark, New Jersey - Cancun, Mexico - Lima, Peru - Buenos Aires, Argentina, through March 10, 1998. Under the arrangement, Mexicana: 1) operates the aircraft on all segments of the route; 2) carries its own traffic between Newark and Cancun under one flight number, and operates beyond Cancun under different flight numbers; and 3) carries Aeroperu's code for traffic between Newark and Lima, and for traffic between Newark and Buenos Aires. These Aeroperu services are held out under one flight number between Newark and Lima, and a different flight number between Lima and Buenos Aires.

If renewal, date of last action(s): September 3, 1997; confirmed by Order 97-9-36.

Applicant representative(s): Robert D. Papkin (for Mexicana) 202-626-6601; and John L. Richardson (for Aeroperu) 202-496-1234.

Responsive pleadings: By letter dated March 5, 1997, Fine Airlines, filed a pleading in opposition to the application, stating that the Government of Peru continues to ban all of its Peruvian operations. Fine stated that perpetuation of this ban violates Peru's obligations under the U.S.-Peru Air Services Agreement, and that until the ban is lifted, it will continue to object to all applications for additional or extrabilateral authority and all requests for waivers of any Department rules, filed by any Peruvian carrier. By letter dated March 7, 1997, Aeroperu responded to Fine's March 5 pleading.

DISPOSITION

Action: Approved through January 5, 1998, and deferred action on remainder (that is, to continue the services beyond January 5, 1998, through March 10, 1998).

Action date: November 4, 1997

Effective date of authority granted: November 4, 1997, through January 5, 1998.

Basis for approval: Overall aviation relations with Mexico and Peru. We are aware, however, of Fine's continuing problems with Peruvian authorities and are continuing to attempt to resolve them. Further, in taking our action, we emphasized that we granted this authority in full reliance on our expectation that the Governments of Mexico and Peru will approve U.S.-carrier requests to implement similar code-share

operations to those countries involving third-country carriers. Should such approval not be forthcoming, we reserved the right to review and to amend, modify or revoke this authority at any time and without hearing. We limited the duration of the extension of authority to 60 days. We determined that the particular characteristics of this application warranted a more limited grant of authority than the duration requested.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

- ___ Standard exemption conditions
- XX Foreign air carrier permit conditions

Special conditions/Partial grant/Denial basis/Remarks: These code-share operations must comply with 14 CFR 399.88 of the Department's regulations, and any amendments to the Department's regulations concerning codeshare arrangements that may be adopted, and the further conditions that this foreign air transportation be sold in the name of the carrier holding out the service in computer reservation systems and elsewhere, and that the carrier selling such transportation accept all obligations established in its contract of carriage with the passenger (that is, the ticket). Also, the Aeroperu services shall be held out under one flight number between Newark and Lima, and a different one between Lima and Buenos Aires; Mexicana shall carry its own traffic between Newark and Cancun under one flight number, and operate beyond Cancun under different flight numbers. Under this authority, Aeroperu is only authorized to conduct operations in the Newark-Lima and in the Newark-Buenos Aires markets.

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)